

PROPOSED AMENDED REGULATION NO. 22 LASER SURGERY GUIDELINES

Pursuant to Ark. Code Ann. 17-95-202, the practice of medicine involves the use of surgery for the diagnosing and treatment of human disease, ailment, injury, deformity, or other physical conditions. Surgery is further defined by this Board as any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical means, to include the use of lasers. The Board further finds that the use of medical lasers on human beings, for therapeutic or cosmetic purposes, constitutes the practice of medicine.

Under appropriate circumstances, that being the performing of minor procedures, a physician may delegate certain procedures and services to appropriately train non-physician office personnel. The physician, when delegating these minor procedures, must comply with the following protocol:

1. The physician must personally diagnose the condition of the patient and prescribe the treatment and procedure to be performed.
2. The physician may delegate the performance of certain tasks in the treatment only to trained non-physician personnel skilled in that procedure.
3. The physician must make himself immediately available to respond to the patient should there be any complications from the minor procedure.
4. The physician should ensure and document patient records that adequately describe the condition of the patient and the procedure performed, and who performed said procedure.

A physician who does not comply with the above-stated protocol when performing minor procedures will be considered as exhibiting gross negligence, subjecting the physician to a disciplinary hearing before the Board, pursuant to the Medical Practices Act and the Rules and Regulations of the Board.

Ark. Code Ann. 17-95-409(a)(2)(g) states that the Board may revoke an existing license, or suspend the same, if a physician has committed unprofessional conduct, further defined as committing gross negligence or ignorant malpractice. The Board finds that a physician has, in fact, committed gross negligence if he performs laser surgery on patients without benefit of: a) clinical experience in the use of lasers; b) training of clinical management of patients; c) continuing medical education courses in the use of lasers; d) providing appropriate preoperative, operative, and post operative management.

MARK-UP COPY

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QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY Arkansas State Medical Board
DIVISION _____
DIVISION DIRECTOR Peggy Cryer
CONTACT PERSON William H. Trice, III
ADDRESS 211 Spring Street, Little Rock, AR 72201
PHONE NO. 501-372-4144 FAX NO. 501-372-7480 E-MAIL Bill@HTHFirm.com

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Subcommittee on Administrative Rules and Regulations
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

- 1. What is the short title of this rule? Amendment to Regulation No. 22: Laser Surgery Guidelines and the delegation of minor procedures to non-physician trained personnel

- 2. What is the subject of the proposed rule? The amendment provides for the delegating of certain minor procedures to train personnel under the appropriate level of supervision and response by the physician.

- 3. Is this rule required to comply with federal statute or regulations? Yes _____ No X
If yes, please provide the federal regulation and/or statute citation.

- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes _____ No X
If yes, what is the effective date of the emergency rule? N/A
When does the emergency rule expire? N/A
Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes _____ No _____ N/A

5. Is this a new rule? Yes _____ No X If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes _____ No X If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes X No _____ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."

6. Cite the state law that grants the authority for this proposed rule? If codified, please give Arkansas Code citation.

ACA § 17-95-303(2) provides that the Board is to make rules and regulations to carry out the purposes of the Medical Practices Act. ACA § 17-95-409 (A)(2)(g) states that a physician may be disciplined if he exhibits gross negligence or ignorant malpractice. This regulation sets forth what would be grossly negligent if the physician violated the regulation.

7. What is the purpose of this proposed rule? Why is it necessary? The amendment permits the delegation of certain minor procedures to trained non-physician personnel and sets forth the supervision and interaction between the physician, trained personnel, and the patient.

8. Will a public hearing be held on this proposed rule? Yes X No _____

If yes, please complete the following:

Date: June 2, 2005

Time: 8:30 a.m.

Place: Board offices, 2100 Riverfront Drive, Little Rock, Arkansas 72202

9. When does the public comment period expire for permanent promulgation? (Must provide a date.) June 2, 2005

10. What is the proposed effective date of this proposed rule? (Must provide a date.)
July 1, 2005

11. Do you expect this rule to be controversial? Yes _____ No X If yes, please explain.

12. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

A copy of the regulation has been forwarded to Arkansas Medical Society, Arkansas Osteopathic Association, and various practitioners who utilize lasers in their practice.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas State Medical Board
DIVISION _____
PERSON COMPLETING THIS STATEMENT William H. Trice, III, Attorney
TELEPHONE NO. 501-372-4144 **FAX NO.** 501-372-7480 **EMAIL:** Bill@HTHFirm.com

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE : Amendment to Regulation No. 22: Laser Surgery Guidelines and the delegation of minor procedures to non-physician trained personnel

1. Does this proposed, amended, or repealed rule or regulation have a financial impact?
Yes _____ No X _____
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.

Not applicable

3. If the purpose of this rule is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. Please indicate if the cost provided is the cost of the program.

Not applicable

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____
Total _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____
Total _____

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule? Identify the party subject to the proposed rule, and explain how they are affected.

Not applicable

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

5. What is the total estimated cost by fiscal year to the agency to implement this rule? **Not applicable**

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____